IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.5191 of 2006
Date of Decision : September 28, 2006.

Vijay Kumar Sharma and others ..... Petitioners

Vs.

Union Territory Chandigarh and others ..... Respondents

Coram : Hon'ble Mr.Justice P.S.Patwalia

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Present : Mr.Arun Jain, Advocate
for the petitioners.

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P.S.Patwalia, J. (Oral) :

The present revision petition has been filed against order dated 23.9.2006 vide which the trial court has directed the original copy of the Will to be handed over to the Investigating Officer in the following terms :-

> *"However, certain observations required to be made in view of the past conduct of the police authorities. The impugned will is an important piece of evidence and is exhibited document in this file. The chances cannot be ruled out that situation reoccur when police authorities take no*

interest in returning the original will to the court. In these circumstances it is ordered that IO before taking original will from the court shall furnish an undertaking to the court that he will return the original will back to the court as soon as its examination is completed. In case IO is transferred or investigation is handed over to some other official, IO who has given an undertaking shall before handing over the investigation to other official produce new Investigating Officer in this court so that his fresh undertaking could be recorded."

A reading of the facts of this case would show that earlier also on 25.01.2006 the trial court had ordered that the will should be handed over to the police authorities to enable them to complete investigation. The petitioner herein had filed Civil Revision No.660 of 2006 challenging the said order. This court while setting aside the said order had made the following observations in that Civil Revision :-

"However, the respondents are given opportunity to make a fresh application to make out their case for such a direction to be issued by the court for handing over the will to the investigating agency. If such an application is made, it would be decided in accordance with law after giving notice to the parties. The Trial court would decide the same within a period of 4 weeks

from the date, the application is made.

Disposed of in the aforementioned terms."

It is in terms of the aforesaid observations that a fresh application was made and the matter has now come to be decided.

The facts that emerge from the pleadings and orders on the record would show that suit had been filed by the petitioners claiming ownership and proprietary rights in respect of the house situated at Chandigarh on the basis of will dated 17.11.1993 allegedly executed by their late father Shri R.L.Sharma. The defendant who was the mother of the petitioners had set up the defence that the will in fact had not been executed and was not genuine. Apparently a complaint had also been made to the police authorities on this basis. An application had also been moved before this court for a direction to police authorities to investigate the complaint. It is under these circumstances that they are investigating the complaint and have requested the court to hand over the will so as to facilitate the investigation.

Mr.Jain, learned counsel for the petitioners however submits that civil suit had been filed in the year 1994. Twelve years have passed. The suit still remains pending. If the will is handed over to the police authorities for investigation the proceedings in the suit will get delayed. I do not find any merit in this contention of the learned counsel. I cannot understand how the proceedings in the suit would get delayed if the will is handed over to the police authorities. If at any stage during the course of evidence original of the will is required it can always be summoned from the police authorities. Still further the court has sufficiently safeguarded the return of the will by the police authorities.

Mr. Jain then refers to Annexures P-3 and P-4 to contend that earlier also the will was handed over to the police authorities and the court had to make more than one order in order to secure its return. That may be so yet it cannot be made a basis to deny access of the will to the police authorities so as to enable them to investigate the matter.

Mr. Jain then submits that in fact the findings recorded by a civil court on the validity of will would bind any findings which may or may not be recorded by criminal court. I find that this contention today is premature at this stage. The police is merely investigating the case. There is no criminal trial pending as on today. As and when such situation arises, the petitioners would always be entitled to avail of legal remedy, if any, available to them, at that time.

Mr. Jain then submits that in the Code of Civil Procedure there is no provision for the defendant to make an application for handing over the documents exhibited in the court to the police authorities for investigation. I do not find any merit in this submission as well as in the circumstances of this case a request has been made by the police authorities to examine the document so as to complete investigation. Earlier also such a request had been made when the will had been actually handed over. It appears that the petitioners are shy of getting the matter investigated at the hands of the police authorities and therefore they are raising obstacles in the course of that investigation. It is therefore that the complainant had to approach this court for direction to the police authorities to get the investigation completed expeditiously. I therefore find no merit in this contention as well. The trial court has accepted the request of investigating agency and had sufficiently safeguarded the safe return of the will.

Consequently I find no merit in the present Civil Revision and the same is accordingly dismissed in limine.

September 28, 2006 (P.S.Patwalia)
monika Judge